

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

SAMUEL HERNANDEZ-MONTILL,

Defendant.

CASE NO. 8:07CR71

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 156). The government adopted the PSR. (Filing No. 146.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the lack of a mitigating role adjustment in ¶ 32 pursuant to U.S.S.G. § 3B1.2. The Court has also reviewed the Defendant's motion for downward departure or deviation (Filing No. 157) and sentencing brief (Filing No. 158). These issues will be addressed at sentencing.

IT IS ORDERED:

1. The Defendant's Objection to the Presentence Investigation Report (Filing No. 156) will be addressed at sentencing;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for downward departure or deviation (Filing No. 157) will be addressed at sentencing.

DATED this 12th day of September, 2007.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge